(39)

HIGH COURT OF CHHATTISGARH AT BILASPUR

M.A.(C). No. 322/2007

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Appellant

The Oriental Insurance Company Ltd. Through Divisional Manager, Divisional Office, Opposite of High, Tahsil & Distt-Bilaspur (CG)

Versus

Respondents

1. Kanti Bai Widow Lakhanlal Miri age about 28 yrs.
2. Suraj Miri S/o Lakhanlal MIri age about 7 yrs.
3. Ku. Sangeeta Miri D/o Lakhan Miri age about 5 yrs.
4. Suryaprakash Miri S/o Lakhanlal Miri age about 3 yrs.
5. Mankuram Miri S/o Bhankulal Miri age about 57 yrs.
6. Smt. Raimunbai W/o Manku Miri age about 55 yrs
   (Respondent No-2 to 4 minor through guardian mother respondent No.1)
7. Bahadur Koushik S/o Shri Mohan Koushik age about 28 yrs.
8. Anil Singh S/o Shri Shivji Singh age about 36 yrs.
   (Registered owner of vehicle auto No. CG 10/A/2290)
   Respondent No. 7 & 8 Resident of Devarikhurd, near to Purana Power House Torwa, Thana Torwa, Tahsil & Distt. Bilaspur (CG)

Present: Shri Sudhir Agrawal, learned counsel for the appellant.

ORAL ORDER

(Passed on 15th March, 2007)

The following oral order of the Court was passed by Dilip Raosaheb Deshmukh, J.

Heard on admission. In this appeal by the insurer the impugned award dated 12th December, 2006 passed by the 9th Addl. Motor Accidents Claims Tribunal in claims Case No. 129/2005 is under challenge whereby in a death case, liability to pay compensation of Rs. 2,16,250 was imposed on the appellant/Insurance company.

3. Brief facts of the case are that on 21.1.2005, Bahadur Koushik, the respondent No. 7 herein was driving a light motor vehicle i.e. an auto rickshaw No. GG 10 3390. The said auto rickshaw dashed with a motor cycle resulting in death of its driver Lakhanlal aged 30 years.

4. Learned counsel for the appellant has not disputed the following facts:-

A/ that, the auto rickshaw No. CG 10 3390 falls under the category of light motor vehicle.

B/ that, at the time of accident the auto rickshaw No. CG 10 3390 was insured by the appellant for commercial purpose.

C/ that, Lakhanlal died as a result of the accident.

D/ that, respondent no. 7 Bahadur Koushik possessed a valid driving license for driving light motor vehicle at the time of the occurrence.

E/ The learned M.A.C.T. has vide its order dated 10.8.2006 granted permission to the appellant/insurer under Section 170 Motor Vehicles Act.

5. In this appeal, the appellant/insurer has raised the following grounds:-

A/ that, Bahadur Koushik, the respondent No. 7 herein did not possess a valid driving license to drive the offending auto rickshaw thereby resulting in a clear breach of policy by the owner.

B/ that, the Tribunal wrongly assessed the income of the deceased at Rs. 3,000/- per month instead of adopting the notional income of Rs. 15,000/- per annum.

C/ that, the deceased also contributed to the accident and therefore, the sole liability for paying compensation cannot be fastened upon the appellant/insurer. No other ground was urged.

6. Learned counsel for the appellant has placed reliance on *National Insurance Company Limited Vs. Kusum Rai and Others* **2006 Vol. II T.A.C. page 1** in support of the contention that Bahadur Koushik did not possess a valid driving license to drive a commercial vehicle. It is not disputed that the auto rickshaw driven by Bahadur Koushik at the time of the accident was a light motor vehicle and that Bahadur Koushik did possess a valid driving license to drive a light motor vehicle at the time of the accident. The Impugned award in paragraph 14 also reflects that there is no material to show that auto rickshaw driven by Bahadur Koushik was transporting goods at the time of the accident. In *National Insurance Co. Ltd. v. Swaran Singh and others* **(2004) 3 SCC 297,** it was held by the Apex Court that "Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards the insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insurer under Section 149(2) of the Act." In view of the fact that the auto rickshaw, a light motor vehicle was driven by a duly licensed driver authorized to drive light motor vehicle and the fact that the said auto rickshaw was insured by the appellant at the time of the accident, the insurer cannot escape from the liability to compensation because there is no material to show that the purely technical breach was in fact fundamental in nature and had in any manner contributed to the accident. The facts of the case law cited by the learned counsel for the appellant are clearly distinguishable since in **Kusum Rai's case** (supra) the offending vehicle was in fact being used as a Taxi at the time of accident. Apart from the undisputed facts mentioned paragraph 3 (A) to (D), there is no material to show in this case that at the time of accident the auto rickshaw was being used for transporting goods. The learned M.A.C.T. has thus rightly fastened the liability to pay compensation on the appellant/insurer.

7. So far as the second ground urged by the learned counsel for the appellant is concerned, though evidence was led before the learned M.A.C.T that the deceased was earning Rs. 4,200/- per month, yet, the learned M.A.C.T has taken monthly income of the deceased at Rs. 3,000/- which in no manner could be said to unreasonable or arbitrary. Since the deceased was aged 30 years at the time of the accident, multiplier 17 was rightly adopted by the Tribunal. Thus, the compensation awarded by the learned Tribunal is just and reasonable compensation and cannot be faulted with. So far as the last point urged by the learned counsel for the appellant is concerned, there is absolutely no material to show that the deceased had, in any way, contributed to the accident.

7. Having thus considered the grounds urged by the learned counsel for the appellant, I am of the considered opinion that the impugned award passed by the learned M.A.C.T. is impeccable. The appeal being devoid of merit is dismissed at the stage of admission. In view of the above, I.A. No. 1/2007 for stay is also dismissed. No order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya